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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No.: CR 05-0335 CW
)	
Plaintiff,)	ORDER FOR DETENTION
)	<u>PENDING TRIAL</u>
v.)	
)	
LESLIE CARL GRAHAM, JR.,)	
)	
Defendant.)	

On July 21, 2005, the defendant made his initial appearance before this Court and was arraigned on a one-count indictment charging him with being a felon in possession of a firearm in violation of Title 18, United States Code, Section 922(g)(1). The defendant was represented at that hearing by Assistant Federal Public Defender David Fermino. At that time, the government moved for a detention hearing on the grounds that under 18 U.S.C. § 3142(f)(2)(A) the defendant posed a serious risk of flight. A detention hearing was set for July 27, 2005 before the Honorable Wayne D. Brazil. Because of the unavailability of Judge Brazil, the hearing was continued to July 28, 2005 before the Honorable Edward M. Chen.

1 On July 28, 2005, the defendant appeared and was represented by Assistant Federal
2 Public Defender Shawn Halbert. Assistant United States Attorney Kirstin M. Ault appeared for
3 the government. Both parties proceeded by proffer. Prior to the hearing the Court had reviewed
4 the report of Pretrial Services. Both sides were afforded an opportunity prior to the hearing to
5 review the bail report of Pretrial Services. The government recommended detention on the
6 grounds of both danger to the community and flight risk under 18 U.S.C. § 3142(e). Pretrial
7 Services also recommended detention on the ground of danger to the community. The defendant
8 opposed detention.

9 The Court finds that there is no clear record of the defendant's failure to appear for court
10 appearances in prior proceedings. The Court further finds that although the defendant does not
11 have a stable residence or employment, his family resides in the area and provides ties to the
12 community. The Court, therefore, finds that while the defendant poses some risk of non-
13 appearance, conditions could be fashioned that would assure his appearance at court
14 proceedings.

15 However, according to the government's proffer and the Pretrial Services report, the
16 defendant has been convicted of seven felony and two misdemeanor offenses. For the past
17 several years, the defendant has been convicted of one offense nearly every year. The
18 convictions are for serious offenses, including carrying a loaded firearm in a public place with a
19 prior, possession of a firearm, drug trafficking, battery and burglary. Significantly, his two
20 convictions for illegally possessing firearms is the same crime with which he is charged in this
21 case. In addition, the defendant has twice been terminated from probation without successful
22 completion because he apparently committed new crimes while under supervision. Mr. Graham
23 has been shot several times. While the defendant's successful completion of his last parole term
24 is a positive sign, it does not provide the Court with sufficient assurance that the defendant's past
25 behavior will change if he is released from custody pending resolution of the charges in this
26 matter.

1 The Court acknowledges Mr. Graham's wife and sister attended the detention hearing
2 and offered to serve as sureties and that he has helped raise his children when out of custody.
3 However, there is insufficient evidence that under the proposed conditions, Mr. Graham is likely
4 to change his behavior of non-compliance with law. Although he has lived largely in Antioch
5 with his wife while out of custody in recent years, he has continued to incur arrests and
6 convictions in Richmond.

7 Therefore, the Court finds by clear and convincing evidence that the defendant poses a
8 danger to the community of continuing to engage in criminal conduct if he were released from
9 custody pending trial in this case. The Court further finds that currently no available conditions
10 of release which could be fashioned that would mitigate this danger.

11 This ruling is without prejudice to the defendant seeking bail review should new
12 conditions warrant, new conditions which would give the Court a reasonable level of confidence
13 that Mr. Graham will not commit any violation of law while on release.

14 Accordingly, the Court hereby ORDERS:

15 (1) that pursuant to 18 U.S.C. § 3142(e) defendant Leslie Carl Graham, Jr. be
16 DETAINED pending trial;

17 (2) that defendant Leslie Carl Graham, Jr. be committed to the custody of the Attorney
18 General for confinement in a corrections facility separate, to the extent practicable, from persons
19 awaiting or serving sentences or being held in custody pending appeal;

20 (3) that defendant Leslie Carl Graham, Jr. be afforded reasonable opportunity for private
21 consultation with counsel; and

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1 (4) that, on order of a court of the United States or on request of an attorney for the
2 Government, the person in charge of the corrections facility in which defendant Leslie Carl
3 Graham, Jr. is confined deliver the person to a United States marshal for the purpose of an
4 appearance in connection with a court proceeding.

5
6 IT IS SO ORDERED

7
8 Dated: August 5, 2005


EDWARD M. CHEN
United States Magistrate Judge